IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.Rev.Pet.No. 649 of 1998(B)

CRL.A.4/1996 OF ADDL.SESSIONS COURT, PARAVUR,
ST.104/1993 OF JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA.
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REVN. PETITIONER/APPELLANT/ACCUSED:

SHAJI, FAHEED TRAVELS,
NEAR DISTRICT COURT,
ALAPPUZHA.

BY ADV. SRI.P.N.RAVINDRAN.

RESPONDENTS/RESPONDENTS/COMPLAINANTS:
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1. **ARAVINDA BABU,**
   S/O. KARUNAKARAN,
   TITUS COLONY,
   NEDUMBASSERY,
   ALUVA.

2. **STATE OF KERALA, REPRESENTED BY**
   THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. R.P. No 649 of 1998

Dated 21st June, 2007

ORDER

The revision petitioner stands convicted for the offence under section 138 N.I Act and sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for 15 days and in addition to pay a sum of Rs.13,000/- as compensation. The prosecution allegation is that the accused borrowed a sum of Rs.13,000/- from the complainant and in discharge of the same, the impugned cheque was issued which when presented got dishonoured for want of sufficient funds in the account of the accused. Notice was sent which was returned unserved.

2. The evidence in the matter consisted of the testimony of PWs 1- the complainant, and Exts.P1 to P5. The defence examined DWl-the branch manager, and got produced Ext..D1 photo copy of the specimen signature of the accused.

3. Counsel for the revision petitioner stressed the fact that notice was not served. The contention that the signature is forged, was rejected by both the courts below on examination of the specimen signature and the signature in the cheque. It is seen from the notings on the reverse of the returned notice that the postman had gone to the place of addressee more than once and also it is noted therein that the revision petitioner has gone to Ernakulam and the intimation was given. In the circumstances, the contention that there was no proper service of notice was rightly rejected by the courts below. In the circumstances, I find that the lower courts' orders are not to be faulted. The conviction is confirmed.

4. So far as the sentence is concerned, I find that the same is liable to be modified. Hence the sentences is modified to imprisonment till the rising of the court and to pay a compensation of Rs.13,000/- to the complainant under section 357(3) Cr.P.C and in default to undergo simple imprisonment for 3 months. The revision

petitioner is granted two month's time from today onwards to remit the amount of compensation. The revision petitioner shall appear before the JFCM -I, Aluva on 21-8-2007 to receive the sentence.

The Crl.R.P is disposed a accordingly.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABANU, J.

CRL.R.P. 649 OF 1998

ORDER

21-6-2007.